

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on the
Commission's Own Motion into Competition for
Local Exchange Service.

Rulemaking 95-04-043

Order Instituting Investigation on the
Commission's Own Motion into Competition for
Local Exchange Service.

Investigation 95-04-044

**ADMINISTRATIVE LAW JUDGE'S RULING
GRANTING, IN PART, MOTION TO MODIFY PRIOR RULING**

I. Background

On April 27, 2001, Pacific Bell Telephone Company (Pacific) filed a motion for modification of the Administrative Law Judge (ALJ) ruling dated November 28, 2000. In this ruling, the assigned ALJ established certain reporting requirements for all currently effective number pools in California and for all future state-mandated number pools. First, carriers were required to report the total quantity of numbers in each rate center of the Numbering Plan Area (NPA) that the carrier expects to need for a six months period, by NXX prefix.¹ Second,

¹ In the Matter of Numbering Resource Optimization, CC Docket Nos. 99-200, 96-98, Second Report and Order, Order on Reconsideration in CC Docket No. 96-98, and Second Further Notice of Proposed Rulemaking in CC Docket No. 99-200, FCC 00-049 (rel. Dec. 29, 2000) (Second Report and Order.)

these reports were to include a written statement of a responsible company officer certifying as to the correctness and accuracy of the information provided. Third, carriers were required to update this report, “whenever the Pooling Administrator requires a thousand-block forecast report per INC Thousand-block Pooling Administration Guidelines.” Fourth, when carriers update their forecast reports, they were required to report to the Telecommunications Division concerning any additional donations of thousand number blocks that they were making to the number pool.

Pacific argues that the reporting requirements in the November 28, 2000 ruling are inconsistent with federal requirements. While the Federal Communications Commission (FCC) previously granted the Commission authority to deviate from the industry guidelines in its deployment of the interim state pooling trials; the FCC also stated that the grant would be superseded by forthcoming decisions in the FCC’s Numbering Resource Optimization proceedings.² On December 29, 2000, the FCC released its Second Report Order In the Matter of Numbering Resource Optimization (FCC Docket CC 99-200), directing state commissions to conform their pooling rules to the national pooling rules. Pacific therefore requests that the requirements in the November 28, 2000 ruling be modified to conform to national rules.

A response in opposition to Pacific’s motion was filed by the Office of Ratepayer Advocates (ORA). A response in support of Pacific’s motion was filed jointly by the California Cable Television Association (CCTA), Cox California

² In the Matter of California Public Utilities Commission Petition for Delegation of Additional Authority Pertaining to Area Code Relief and NXX Code Conservation Measures, CC Docket 96-98, Order, FCC 99-248 (released September 15, 1999), ¶ 7.

Telecom, LLC and Time Warner Telecom of California, L.P. (joint parties).

Pursuant to Rule 45 of the Commission's Rules of Practice and Procedure, on May 21, 2001, Pacific telephoned ALJ Pulsifer and was granted permission to file a reply to the ORA, The Utility Reform Network (TURN) Response, which it filed on May 24, 2001.

II. Pacific's Proposed Modifications

A. Signature Certification Requirement

Currently, the Pooling Administrator requires a thousand-block forecast report semi-annually for all NPAs in pooling and when establishing a new inventory pool. Pacific agrees to provide the Commission copies of these reports but argues that Federal rules, do not require a written statement of a responsible company officer certifying as to the correctness and accuracy of the information provided. Pacific argues that the requirement in the ALJ ruling that such a certification be provided is inconsistent with the federal rules and should be eliminated.

Pacific argues that the certification process decreases the number of days available for validation of the thousand-blocks that will be donated to the pool. The reports must be completed sufficiently in advance of the reporting deadline to allow time for certification by a company officer. Although the reports are reviewed for accuracy and completeness prior to the certification process, Pacific's certification process includes a review by the Vice-President of Network Engineering, located in San Ramon, California, as well as final review and signature from the Senior Vice-President of Network and Engineering located in San Antonio, Texas.

Pacific therefore asks for the certification requirement to be eliminated to conform to federal rules. The joint parties support Pacific's proposed

modification arguing that accountability safeguards exist even without the Commission certification. First, the Pooling Administrator's required thousand-block forecast report submitted semi-annually for all NPAs in pooling requires the signature of the block applicant attesting that the information submitted is true and accurate.³ Also, the FCC's Second Report and Order sets forth an audit program to verify carrier compliance. The Order also finds that carriers found to be in violation of FCC reporting requirements may be subject to possible enforcement action, including monetary forfeitures, revocation of interstate operating authority and cease and desist orders.⁴

ORA and TURN opposed Pacific's proposed modification, arguing that the point of having a certification and signature requirement is to ensure that data provided to the Commission is accurate and complete. Thus, ORA and TURN believe the Commission should retain the certification and signature requirement, noting that Commission routinely requires certification and/or signature on a variety of filings submitted to it.

Discussion

As noted by the joint parties, the INC Pooling Administration Guidelines already require that carriers' semi-annual forecast reports provide a responsible signature attesting to the truth and accuracy of the information. To the extent that carriers provide the Commission a copy of these reports with the

³ The form, Attachment 1, Part 1A requires a signature attesting to the following: "I hereby certify that the above information requesting an NXX-X block is true and accurate to the best of my knowledge and that this application has been prepared in accordance with the Thousand-Block (NXX-X) Pooling Administration Guidelines INC 99-0127-023."

⁴ *Supra* at VI.A.3.

attesting signature included, pursuant to INC Guidelines, we shall not require a separate certified signature. We shall, however, treat the certifying signature provided pursuant to INC guidelines as binding upon carriers that provide a copy of these reports to the Commission. In any event, we place all carriers on notice that by virtue of providing copies of any federally required reports with the Commission, carriers remain responsible for the truth and accuracy of such reports. To the extent any such reports contain untrue or misleading information, carriers shall be subject to potential penalties or other sanctions pursuant to Rule 1 of the Commission's Rules of Practice and Procedure. Rule 1 states:

“Any person who signs a pleading or brief, enters an appearance at a hearing, or transacts business with the Commission, by such act represents that he or she is authorized to do so and agrees to comply with the laws of this State; to maintain the respect due to the Commission, members of the Commission and its Administrative Law Judges; and never to mislead the Commission or its staff by an artifice or false statement of fact or law.”

Any carrier that files copies of number pooling reports with the Commission “transacts business with the Commission” as defined by Rule 1. Accordingly, whether or not, a certifying signature is attached, any carrier that submits copies of such reports to the Commission that contain false or misleading information could be subject to a finding of a Rule 1 violation. In such an event, the Commission may take punitive action by imposing penalties or other sanctions resulting from the carrier's violation of the Commission's Rule 1.

B. Additional Reporting Requirements

Pacific further argues that the ALJ Ruling's requirement that carriers submit an updated inventory report and donation sheet whenever the Pooling Administrator requires a forecast report is also inconsistent with federal rules. The FCC did not delegate authority to the states to impose additional regularly scheduled reporting requirements on any carriers. Pacific believes, however, that requiring updated inventory and donation reports when it provides a forecast report to the Pooling Administrator, the ALJ Ruling creates additional regularly scheduled reporting requirements.

Pacific requests that the Commission modify the reporting requirements in the November 28, 2000 ALJ Ruling to only require providers to submit copies to the Commission of the reports described in the Thousand-Block Number Pooling Administrative Guidelines and to submit donations as outlined in those guidelines.

The joint parties support Pacific's request, in view of the FCC requirement for states to conform their rules to national rules. ORA and TURN oppose Pacific's proposal to eliminate this reporting requirement, arguing that the Commission requires submission of inventory reports and donation sheets for the purpose of effectively and efficiently managing the pools. ORA and TURN claim that the FCC has not addressed the issue of state authority to require production of data in the context of managing number pools, but that the FCC prohibition against states imposing additional reporting requirements only applies to number administration.

Discussion

Effective with this ruling, the requirement will be discontinued for carriers to submit to the Commission an updated inventory report and

donation sheet on a regular basis whenever the Pooling Administrator requires a forecast report. This reporting requirement relates to number utilization data, not to number pooling. Therefore the requirement to conform to FCC utilization reporting requirements would not apply here. Nonetheless, upon reexamination of our data filing needs, we conclude that it is not necessary to continue requiring this data as a regular reporting requirement for all carriers. We reserve the option, however, of requiring such data as may prove necessary on an occasional or case-by-case basis.

Carriers still remain subject however, to the requirement, to provide the Commission with access to federally mandated semi-annually reported forecast and utilization data, subject to appropriate confidentiality protections, as provided in the FCC's First Report and Order. (*See* Para. 152.) The FCC clarified in its Second Report and Order its grant of states' access to mandatorily reported forecast and utilization data includes all such data. (*See* Para. 118.) By granting access to such data, the FCC recognized that the states would better be able to meet their obligations regarding the implementation of area code relief and to act on their delegations of additional numbering authority. (Second Report and Order, Para. 116.)

C. Subsequent Contributions of Blocks After Inception of the Pool

Pacific also seeks modification of the ALJ Ruling to eliminate the requirement that carriers make subsequent contributions of contaminated blocks for number pools. The ALJ Ruling states, in the context of updates to inventory reports, that "donations to the pool are required for any inventory in excess of a carrier's six-month inventory." Pacific believes this requirement could conceivably require carriers to donate contaminated thousand-blocks after a pool

has already begun. However, Pacific claims that according to the INC Pooling Guidelines, service providers are required to make donations of contaminated blocks to the pool only at the beginning of a new pool, not to existing pools. In order to conform to national rules, Pacific believes the ALJ Ruling should be modified to state that block donations are required only at the beginning of a new pool.

ORA and TURN note that the Commission has not specifically ordered that contaminated blocks be donated to the pool after the pool has already opened; it merely reiterated that donations should be made “consistent with previously adopted rules.” However, if it were to so order, ORA and TURN believe it would be within the scope of Commission authority to deviate from the INC guidelines, and that there may be good cause for requiring post-opening donation of contaminated blocks. ORA and TURN have no objection to Pacific’s request that this issue be clarified, but do object to the substance of the clarification Pacific proposes.

Discussion

We acknowledge that the INC Pooling Guidelines provide that: “[service providers] will not be required to donate contaminated thousands-blocks for ongoing replenishment of the industry inventory pool.” (Sec. 7.4.1.) At the same time, however, the FCC’s Numbering Resource Optimization First Report and Order⁵ required carriers to donate thousands-blocks in excess of their six months inventory needs to the number

⁵ See In the Matter of Numbering Resource Optimization, CC Docket No. 99-200 Report and Order and Further Notice of Proposed Rulemaking, FCC 00-104, released March 31, 2000.

pool. It would not promote efficient number utilization for carriers to knowingly refuse to donate thousands-blocks in excess of their six-month inventory based on changes in their numbering needs subsequent to the opening of the pool.

The INC Pooling Guidelines, moreover, do provide that service providers “may also voluntarily return any resources to assist in the replenishment of the industry inventory pool” after the initial pool has been established (Sec. 7.4.2). Moreover, prior to requesting a new NXX code from the Code Administrator, the Pooling Guidelines state that the Pooling Administrator “could request [carriers] to voluntarily return in any contaminated thousands-blocks or NXX codes within their inventories which are not required based on their six-month inventory forecast.” Consistent with the intent of the Pooling Guidelines and the FCC’s First Report and Order, therefore, we expect carriers to continue to donate blocks as necessary beyond the initial donation date in order to keep their inventory at or below the 6-month inventory limit that the FCC has established in its First Report and Order.

IT IS RULED that:

1. The motion of Pacific is granted, in part, to the extent it seeks an order discontinuing the Commission’s separate signature certification requirement, and separate updating of inventory reports and donation sheets whenever the Pooling Administrator requires a forecast report.
2. Carriers remain liable for violations of Commission Rule 1 for any submissions of copies of federally mandated numbering reports that contain untrue or misleading statements, whether a certifying signature is attached or not.
3. The state-mandated requirement is hereby discontinued for carriers to submit an updated inventory report and donation sheet on a regular basis

whenever the Pooling Administrator requires a forecast report. We reserve the option, however, to require such data on an occasional or case-by-case basis as conditions warrant.

4. Although INC Pooling Guidelines do not require carriers to donate thousands-blocks for “ongoing” replenishment of an industry inventory pool, the First Report and Order requires carriers to donate thousands-blocks in excess of their six months inventory needs to the number pool.

5. Consistent with the intent of the Pooling Guidelines and the FCC’s First Report and Order, therefore, California carriers are expected to donate blocks beyond the initial donation date in order to keep their inventory at or below the 6-month inventory limit that the FCC has established.

Dated October 1, 2001, at San Francisco, California.

/s/ Thomas R. Pulsifer

Thomas R. Pulsifer
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge's Ruling Granting, in Part, Motion to Modify Prior Ruling on all parties of record in this proceeding or their attorneys of record.

Dated October 1, 2001, at San Francisco, California.

/s/ Antonina V. Swansen
Antonina V. Swansen

N O T I C E

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